

HOUSE BILL 1792

By Kane

AN ACT to amend Tennessee Code Annotated, Title 5 and Title 16, relative to civil penalties.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 5-1-211(b), is amended by deleting the subsection and substituting instead the following:

(b) Notwithstanding any other law to the contrary, in any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census, the county government is empowered to set maximum monetary penalties and forfeitures up to five thousand dollars (\$5,000) for the violation of a county ordinance. In counties with a population of over seven hundred thousand (700,000), according to the 1990 federal census, no fine over fifty dollars (\$50.00) is allowed unless the ordinance permitting such is approved by a two-thirds (2/3) vote of the county commission. A county shall give the violator reasonable notice of the assessment of any penalty.

SECTION 2. Tennessee Code Annotated, Section 5-1-211(i), is amended by adding the following language as a third sentence:

This subsection (i) shall not apply in any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census.

SECTION 3. Tennessee Code Annotated, Section 5-1-211, is amended by adding the following language as new subsections (c) and (d), and by redesignating the existing subsections (c) and (d) and remaining subsections accordingly:

(c) This subsection (c) shall only apply in any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census. In assessing a civil penalty, the following factors may be considered:

- (1) The harm done to the public health, welfare, safety, morals or the environment;
- (2) Whether the civil penalty imposed will be a substantial deterrent to the illegal activity;
- (3) The economic benefit gained by the violator;
- (4) The amount of effort put forth by the violator to remedy the violation;
- (5) Any unusual or extraordinary enforcement costs incurred by the county;
- (6) The amount of penalty established by ordinance or resolution for specific categories of violations; and
- (7) Any equities which outweigh imposing the penalty or damage assessment.

(d) In any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census, the county may also assess damages proximately caused by the violator to the county which may include any reasonable expenses incurred in investigating and enforcing violations, reasonable attorney fees in any appeal and any other actual damages caused by the violation.

SECTION 4. Tennessee Code Annotated, Section 5-1-211, is further amended by adding the following language as new subsections:

(j)

(1) This subsection (j) shall only apply in any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census.

(2) The county mayor shall establish and the county legislative body shall approve a procedure for appeal of the civil penalty or damage assessment provided under this part. If a petition for review of such damage assessment or civil penalty is not filed within thirty (30) days after the damage assessment or civil penalty is served in any reasonable manner, the violator shall be deemed to have consented to the damage assessment or civil penalty and it shall become final. The alleged violator may appeal a decision of the governing body or board pursuant to title 27, chapter 8. Any fines collected for such violation shall be paid into the county general fund unless the ordinance otherwise provides. If the county fails to establish and adopt an administrative process under this subsection (j), an action to enforce the civil penalties or damage assessment may be brought by or on behalf of the county in any court of competent jurisdiction.

(k)

(1) This subsection (k) shall only apply in any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census.

(2) Whenever any damage assessment or civil penalty has become final because of a person's failure to appeal, the county may apply to the appropriate chancery court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment. The amount of the judgment shall become a first and prior lien on the debtor's property found within this state; provided, however, that said lien shall not have priority over prior liens running in favor of any governmental entity.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.